THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.21250 of 2005 & 6235 of 2006

DATED: 26-04-2006

W.P.No.21250 of 2005

G.K.Gopal & 12 others

...PETITIONERS

AND

The Government of Andhra Pradesh,

Rep., by its Secretary,

Municipal Administration &

Urban Development Department,

Hyderabad & 3 others.

...RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

W.P.NO.6235 OF 2006:

-

Shama Apartments Flat Owners Welfare Association,

Rep., by its Authorised RepresentativeDr.R.V.Reddy,

138/1, Prenderghast road, Secunderabad & another.

-

... PETITIONERS

AND

The Government of Andhra Pradesh,

Rep., by its Secretary,

Municipal Administration,

Secretariat,

Hyderabad & 2 others.

-

... RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

COMMON ORDER:

-

Heard the learned counsel appearing for the petitioners as well as the learned standing counsel appearing for the respondents.

2. Writ Petition No.21250 of 2005 has been filed by the petitioners seeking Mandamus declaring the action of the respondents in trying to demolish the properties of the petitioners bearing Nos.1-8-303/28, 1-8-229/14 & 14/1, 1-8-229/7, 1-8-303/29, 1-8-303/30, 1-8-303/25, 1-8-229/9, 1-8-229/10, 1-8-146/A, 1-8-303/26, 1-8-303/16-A, 1-8-229/6, 1-8-229/6/1-2, 1-8-229/6/1-3, 1-8-229/1/1-4 and 1-8-303/27, Prenderghast road, Sindhi Colony, Secunderabad respectively, as illegal, arbitrary and violative of the Articles 14 and 300-A of the Constitution of India.

3. Writ Petition No.6235 of 2006 has been filed seeking Mandamus declaring the letter dated 21-09-2005 intending to acquire 200 sq.yards of land in premises bearing No.138/1, P.G.Road, Secunderabad once again for the purpose of road widening of existing 50' road to 80' wide road, for which purpose already an extent of land admeasuring 555 sq.yards was acquired and possession was handed over to respondents, as illegal, arbitrary and without jurisdiction.

4. Questioning the notice dated 21-09-1994 informing the 1st petitioner in W.P.No.6235 of 2006 that the Municipal Corporation of Hyderabad has taken up road widening proposal of P.G.Road (Reach-II) starting from Foodworld to Minister Road and proposed to widen the road to 80 ft as per ZDP so as to ensure free flow of traffic and accordingly the 1st petitioner has been requested to exercise his consent to hand over the vacant possession of the affected area in the road widening programme to the Municipal Corporation, Hyderabad in public interest. In response to the said notice certain representations have been received and the respondents prepared a revised road development plan, as per the request of the petitioners and others. Accordingly the petitioners are requested to hand over advance possession of the affected area in road widening to the Municipal corporation of Hyderabad in public interest and in response to the said notice the 1st petitioner submitted a representation with certain conditions such as shifting of electric transformer, construction of underground fresh water sump, reconstruction of compound wall and other structures. The Municipal Corporation of Hyderabad in its letter dated 13-09-2005 stated that it will shift the electric transformer, reconstruct the compound wall and pay compensation to the other affected structures, if any, as per the structural valuation and extend all benefits as provided in G.O.Ms.No.483 dated 24-08-1998 for carrying re-development in the balance area and TDR certificate also will be given for utilizing FSI as and when the orders are received from Government. It is stated that the Municipal Corporation of Hyderabnad, in its letter dated 09-03-2006 addressed to the 1st petitioner, informed that the respondent-Municipal Corporation of Hyderabad has taken up road widening proposal of P.G.Road (Reach-II) starting from FoodWorld to Minister Road and proposed to widen the road to 80 ft as per ZDP so as to ensure free flow of traffic. It is stated in the said letter that as per the discussion held with the office bearers of the Municipal Corporation of Hyderabad on 08-03-2006 it was decided that the payment of land compensation will be made as per the Land Acquisition Act and therefore the petitioners are requested to hand over the road widening affected portion in advance so as to take up the civil work for the construction of alternate compound wall etc., in public interest.

5. Insofar as W.P.No.21250 of 2005 is concerned it is the grievance of the petitioners that the respondents issued various notices dated 23-07-2005 earmarking the

affected portions of the property and the petitioners are requested to exercise their consent to hand over the possession of the affected area in road widening on payment of compensation and the other structures, if any, as per the structural values and the corporation expressed its intention to extend all the benefits as per the G.O.Ms.No.483 dated
24-04-1998 for carrying redevelopment of the balance area.

6. It is the case of the petitioners that P.G.Road is only a connecting road between M.G.Road and Minister Road and there is no need or necessity to widen the same. It is stated that when certain portions of the properties were already taken for widening of the road granting permission for construction and at that time the widening of the road upto 80 ft was not done but thereafter widening of the road upto 80 ft was taken up and impugned notices have been issued earmarking the portions which are coming in the road widening proposal.

7. It is also the case of the petitioners that in fact even when a portion of the properties of some of the petitioners was acquired, the Corporation has granted permissions for constructions. Even then it did not contemplate that the entire road should be 80 ft. It is stated that widening of a road has to be made to the said extent on both sides, but respondents are taking up the widening of the road on one side only. Petitioners' houses in W.P.No.21250 of 2005 are on one side of the P.G.road but the 1st petitioner, Shama Apartments, in W.P.No.6235 of 2006 is on the other side. Thus, it is the case of the petitioners that road widening has to be taken equally on both sides.

8. A counter-affidavit has been filed in W.P.No.21250 of 2005 stating that the respondents notices, issued dated 23-07-2005 clearly indicates the reference to the letter dated 21-09-2004 and representations from the petitioners. After considering the said representation only the said notices have been issued marking the portion affected in the road widening. It is stated that the petitioners 1 and 13 approached respondents 2 to 4 and executed an undertaking to surrender the land required for the widening of the proposed 80 ft road and accordingly obtained permission for construction of the ground, 1st and 2nd floors. Having executed an undertaking, petitioners 1 and 13 constructed a compound wall without handing over the affected area in the widening of the road, having taken the benefit for construction of extra

FSI. It is stated that the 10th petitioner also filed an undertaking to give up the land free of cost and obtained permission for the construction of the building, but having obtained the building permission the area sought to be given for road widening has not been handed over. Further, it is submitted that the petitioners 1, 10 and 13 have already executed an undertaking to surrender the affected portion of land under proposed road widening, while taking permission duly stating that the road widening affected portion is handed over to the respondent corporation free of cost. If the principle of taking equal area on either side of the road is followed, the petitioners would be losing the already constructed structures. While so some of the building owners are prepared to surrender the land required in spite of surrendering the land according to the earlier road development plan.

9. Insofar as W.P.No.6235 of 2006 is concerned it is stated in the counter-affidavit that the owners of the 1st petitioner obtained building permission in the year, 1983 by taking over the affected portion of 25 ft from the center of the road as per the then road development plan. At the time of granting permission the existing road was in a zig zag manner, i.e., at some point it was 40 ft width and at some other point it was 60 ft. Thereafter the revised road development plan has been prepared on the representations received from the counselor & others petitioners and accordingly notices were issued stating that the extent of road widening is 10 ft on both sides. The Corporation has modified the road development plan on 12-08-2004 and now the road development plan has been approved to take up the widening on both sides of the road which would be affecting both sides of the properties to achieve 80 ft wide road and by this modification only compound walls on both sides of the properties are affecting and not the main building structures. It is stated that the 1st petitioner's Apartment surrendered the affected portion of 25 ft from the center of the road for 80 ft wide road of P.G.Road while obtaining building permission vide permit No.171/78 dated 23-09-1983 in File No.219/TP/A3/80-83, but in view of the modified road development plan in order to save the damage of main building structures, 10 ft more is affecting now under the revised road development plan. Therefore, the allegation of the petitioners that the opposite side property owners have encroached the road is false and baseless. Accordingly, the impugned order dated 21-09-2004 and 09-03-2006 was issued to the 1st petitioner to surrender the affected portion in the road widening programme under negotiation by accepting some benefits offered by the respondent corporation. It is stated that if the 1st petitioner is

not willing to surrender the said land under negotiation, the respondent corporation initiates action under Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for brevity 'the Act'). Therefore the allegations made by the 1st petitioner that the respondents are taking steps for widening of the road on one side only is not correct.

10. In the additional affidavit it is stated that the widening of the road could not be taken up on its full extent to maintaining 80 ft. road from M.G.Road to Minister Road in view of the pendency of the other cases where injunction orders/status quo orders have been pending. The particulars are as follows:

S.No.	O.S.No.	Name of the party	Premises No.	State of the Case
1.	1477/2005	Shyam Gopal Das & others	1-8-31 to 41 &131 to 143, P.G.road	Injunction petition dismissed for default on13.2.2006 and suit posted to 15.6.2006.
2.	508/2005	Smt.Sheela Lalwani & 2 others.	1-8-303/40, Plot No.40 Rasoolpura,Begumpet	Injunction petition dismissed for default on 6.2.2006 and restoration petition is pending & suit posted to 16.6.2006 for trial.
3.	131/2005	P.Narayana & Others	1-8-54/1/1 P.G.road	Injunction petition dismissed on 23.3.2006 and suit posted to 13.6.2006 for trial.
4.	CMA.53/04 in O.S.51/03	Ranbeer Singh Gandhi	1-8-153/1 P.G.road	CMA allowed on 17.10.2005 and main suit for defendant evidence on 9.6.2006.
5.	960/05	Ramankumar Gupta	1-8-142 & 143 P.G.road	Status Quo ordered pending and suit is posted to 27.6.2006 for filing Commissioner report.

6.	51 /03	Ranbeer Singh Gandhi	1-8-153/1 P.G.Road	CMA.53/04 allowed on 17.10.2005 and main suit for defendant evidence on 9.6.2006.
7.	A.S.43/03 in O.S.450/99	Smt.Asha Devi	1-8-42/43/ P.G.Road	Status Quo order pending and suit is posted to 13.6.2006 for arguments.
8.	211/03	Parveen Begum	1-8-208 to 143/A P.G.road	Suit dismissed for default on 15.9.2005
9.	103/03	Shyam Gopal Das	1-8-31 to 41, 137 to 141 P.G.Road	I.A. reserved for orders.
10.	622/03	K.S.Ramakrishnan	1-8-84/B P.G.road	Status Quo order pending and suit is posted to 9.6.2006 for arguments.
11.	772/02	Jyothi Shyam	1-8-31 to 41, 131 to 141 P.G.road	Reserve for orders.
12.	1393/02	M.Srinivas Arya.	1-8-206 P.G.Road	Reserve for orders.
13.	441/02	G.K.Gopal & another.	1-8-303/B-27 P.G.road	Suit dismissed on 8.12.2005.
14.	331/00	Tahira Sulthana	1-8-201, Metro Salona Apts. P.G.road	Reserve for orders.

15.	305/97	M.G.Shyam & Smt.Jyothi M Shyam	1-8-215/7 to 215/7/2 P.G.road.	Reserve for orders.
16.	984/97	Asha Devi.	1-8-44 to 46 P.G.road	Reserve for orders.

There is no any justification on the part of the respondents in not implementing the widening of the road programme in accordance with law by demolishing the illegal structures after dismissal of the injunction petitions and the suits.

11. In the aforesaid cases the respondents shall evince interest in bringing to the notice of the concerned civil Courts about the deviations/unauthorized structures/encroachments made over the main road and construction of the cellars, unauthorized buildings so as to enable the civil Courts to dispose of the civil suits in

accordance with law. Any pendency of the injunction orders/status quo orders may affect the free flow of traffic even though the major portion has been widened.

12. Insofar as buildings where no undertaking has been filed for surrender of the land affected in the road widening work taking benefits under the G.O.Ms.No.483 dated 24-08-1998 and other benefits after negotiations it is open for the respondents to take up the widening programme and wherever there are no undertakings for surrendering the structures and the lands on payment of compensation it is open for the respondents to initiate Land Acquisition proceedings and widen the road.

13. Accordingly the Writ Petitions are disposed of directing the respondents to take up the road widening programme by following due procedure prescribed under law under Section 146 of the Act pursuant to the filing of the undertakings for payment of compensation for the structures and for giving the benefit for the construction of extra F.S.I as per the G.O.Ms.No.483 dated
24-08-1998 and on payment of compensation for the structures, if not already paid and take away the portions coming under the road widening limit and if any of the persons who have not filed undertakings to surrender the land or to avail the benefit of G.O.Ms.No.483 dated 24-08-1998, it is open for the respondents to initiate Land Acquisition proceedings for acquiring the land and structures for the purpose of road widening.

_____

V. ESWARAIAH, J

26th April, 2006

tsy